



UNITED STATES PATENT AND TRADEMARK OFFICE

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Paper No. 50

ENZO BIOCHEM INC  
527 MADISON AVENUE (9TH FLOOR)  
NEW YORK NY 10022

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**OCT 14 2003**

**OFFICE OF PETITIONS**

In re Application of  
Brakel, et al.  
Application No. 08/479,999  
Filed: June 28, 1994  
Title: MODIFIED NUCLEOTIDE  
COMPOUNDS

DECISION ON PETITION

This is a decision on the petition to revive the above-identified application under 37 CFR 1.137(b), filed December 26, 2001. The Office apologizes for the delay.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is **not** a final agency decision within the meaning of 5 USC 704.

The above-identified application became abandoned for failure to timely file a proper response to the final Office action mailed September 26, 2000, which set a shortened statutory period for reply of three months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on December 27, 2000. A Notice of Abandonment was mailed on July 16, 2001.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d).

The instant petition lacks item (1), the required reply.

With the instant petition, petitioner filed an amendment in response to the final Office action. The proposed reply to a final Office action required for consideration of a petition to revive must be either (1) a Notice of Appeal (and fee required by law); (2) an amendment that *prima facie* places the application in condition for allowance; (3) the filing of a continuing application under 37 CFR 1.53(b) or if applicable, 1.53(d); (4) a request for a continuing examination (RCE) under 37 CFR 1.114; or (5) if applicable, a 37 CFR 1.129(a) submission.

Petitioner's only submission, an amendment, has been determined by the examiner not to *prima facie* place the application in condition for allowance. Thus, petitioner has failed to submit the required reply.

In order for the application to be revived, petitioner must submit a required reply within the meaning of 37 CFR 1.137(b)(1). **Any renewed petition should be accompanied by a proper reply in the form of a Notice of Appeal, the filing of a continuation application or an RCE.** If petitioner fails to reply in the form of a Notice of Appeal, a proper continuing application, or a proper RCE, it may be construed as an intentional delay in presenting a grantable petition, which may adversely affect petitioner's ability to revive the abandoned application.

The \$1,280 fee for the petition under 37 CFR 1.137(b) has been charged to Deposit Account No. 05-1135, as authorized.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, Virginia

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.



Cliff Congo  
Petitions Attorney  
Office of Petitions